

## CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: Nov 5, 2015

Action Requested By: Administration

Agenda Type: Resolution

**Subject Matter:**

Lease agreement with U.G. White Hardware for 115 East Clinton Avenue Office Space.

**Exact Wording for the Agenda:**

Resolution authorizing the Mayor to execute a Lease Agreement between U.G. White Hardware, LLC, and the City of Huntsville for the Lease of Office Space at 115 East Clinton Avenue, Huntsville, Alabama.

**Note: If amendment, Please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: \_\_\_\_\_

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Mary C. Cates

Date: Oct 28, 2015

RESOLUTION NO. 15-\_\_\_\_\_

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Lease Agreement by and between the City of Huntsville, Alabama, and U.G. White Hardware, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Lease Agreement between U.G. White Hardware, LLC, and the City of Huntsville, Alabama, for the Lease of Office Space at 115 East Clinton Avenue, Huntsville, Alabama," consisting of ten (10) pages, and the date of November 5, 2015, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 5th day of November, 2015.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

APPROVED this the 5th day of November, 2015.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

STATE OF ALABAMA )  
 )  
COUNTY OF MADISON )

**LEASE AGREEMENT  
BETWEEN U. G. WHITE HARDWARE, LLC  
AND THE CITY OF HUNTSVILLE, ALABAMA  
FOR THE LEASE OF OFFICE SPACE  
AT 115 EAST CLINTON AVENUE,  
HUNTSVILLE, ALABAMA**

**LEASE AGREEMENT**

This **Lease agreement** is made, entered into and executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, between **U. G. White Hardware, LLC**, a domestic limited liability corporation organized under the laws of Alabama, having its principal office at **115 East Clinton Avenue**, Huntsville, Alabama ( hereinafter referred to as "Lessor") and the **City of Huntsville, Alabama**, a municipal corporation organized under the laws of Alabama, having its principal office at 308 Fountain Circle, Huntsville, Alabama (hereinafter referred to as "Lessee").

**SECTION ONE. LEASE OF PREMISES**

A. Lessor **leases** to Lessee and Lessee **leases** from Lessor for the term of this **lease**, at the rental provided below, and upon all the conditions set forth in this **lease agreement**, the apartment/office space at the rear of the "Mason Building" at **115 East Clinton Avenue** consisting of approximately 1,000 square feet.

B. The above-described real property and the building and other improvements are referred to in this **lease agreement** as the "premises."

C. The unit of the building subject to this **lease agreement**, as outlined on the diagram attached to this **lease agreement** as Exhibit A, is referred to in this **lease agreement** as the "demised premises."

D. The agreed floor area of the demised premises is approximately 1,000 square feet, which is comprised two rooms of office space, a small kitchen area, a bathroom with shower and closet space.

**SECTION TWO. TERM**

The term of this **lease agreement** shall commence on September 1, 2015 and shall continue for ten (10) years unless sooner terminated pursuant to the provisions of this **lease agreement**.

**SECTION THREE. RENT**

A. Lessee shall pay to Lessor as rent for the demised premises the amount of seventy-five thousand dollars (\$75,000) within ten days of approval and execution of the lease as payment for all rental for the first five (5) years of the lease term. Thereafter, rental payments shall be paid by the Lessee either annually in advance of each lease term year in the amount of fifteen thousand dollars (\$ 15,000) per year or, if the Lessee elects to do so, may be paid on a monthly basis at the rate of \$1,250.00 per month.

B. Rental shall be payable without notice or demand and without deduction, offset, or abatement to Lessor at the address of 101 North Jefferson Street, Athens, AL 35611.

C. In the event that the term of the lease is reduced by reason of default of the Lessor, Lessee or due to condemnation, the amount of the rental to be refunded or paid shall be calculated at the rate of \$1,250.00 per month.

#### **SECTION FOUR. ADDITIONAL CHARGES**

A. In addition to the rent specified in SECTION THREE, Lessee shall pay certain costs and expenses in connection with the operation of the premises, including utilities, and any costs for the day to day maintenance of the premises.

B. Lessor shall assure that all utilities are separately metered in order to measure Lessee's consumption of utilities fairly. In the event that the installation of separate metering has not occurred prior to the occupancy date of Lessee, then Lessor will submit invoices to Lessee periodically for Lessee's proportionate share of the costs. All such invoices shall be payable within fourteen (14) days after receipt.

#### **SECTION FIVE. USE**

A. The demised premises shall be used and occupied by the Lessee for office space, storage, or for police operations and related activities and shall not be used for any other purpose without the prior, express, and written consent of Lessor.

B. No act shall be done in or about the demised premises that is unlawful.

C. Lessee will not commit or allow to be committed any waste on the premises, or any public or private nuisance or other thing that disturbs the quiet enjoyment of any other tenant in the building.

D. Lessee shall comply with all laws relating to the use of the building.

#### **SECTION SIX. LESSOR'S OBLIGATION TO REPAIR**

A. Subject to the provisions of SECTION ELEVEN of this **lease agreement**, and except for damage caused by the negligence or intentional act or omission of Lessee, Lessee's agents, employees, contractors, invitees, Lessor, at Lessor's sole expense, shall keep in good appearance, order, operation and condition and make structural and other necessary repairs to the perimeter walls, roof, bearing structure, foundation of the building, which are common to the building and the ventilation, cooling and heating equipment, mechanical, electrical, and plumbing systems servicing the premises, provided that any such repair necessitated by fire or other casualty shall be made only in accordance with the provisions set forth in SECTION ELEVEN of this **lease agreement**.

B. It is specifically agreed that Lessor will not be required to make any repairs necessitated by reason of the negligence or default of Lessee, or Lessee's employees, agents, or licensees.

## SECTION SEVEN. LESSEE'S MAINTENANCE OBLIGATIONS

A. Subject to the provisions of SECTIONS SIX and ELEVEN, Lessee, at Lessee's expense, shall keep the interior of the demised premises in good condition and shall perform regular cleaning and day to day maintenance as necessary. Lessee agrees to reimburse Lessor annually for the reasonable cost of an annual service contract for routine inspection and filter changes on the HVAC unit exclusively servicing the premises. The Lessee's agreement to reimburse these HVAC maintenance expenses is conditioned upon such expenses not exceeding **Three Hundred Dollars (\$300)** annually for the initial lease year and for similar reasonable amounts each additional year of this lease agreement. Lessor shall submit an invoice each year detailing the amount of the service contract allocable to the HVAC unit servicing the premises.

B. At the expiration or termination of this **lease agreement**, Lessee shall surrender the demised premises to Lessor in as good condition as when received by Lessee from Lessor or as subsequently improved, reasonable use and wear excepted.

C. Lessee shall repair any damage to the demised premises or to the building occasioned by Lessee's use of the premises, or by the removal of Lessee's trade fixtures, furnishings, and equipment, which repair shall include the patching and filling of holes and repair of any structural damage.

## SECTION EIGHT. LESSEE'S FAILURE TO MAINTAIN

If Lessee fails to perform its obligations to maintain the demised premises, Lessor may at its option (but shall not be required to do so) enter upon the demised premises, after ten (10) days' prior written notice to Lessee, and put the demised premises in its previous condition, or otherwise cure the default. The cost of any such action shall become due and payable as additional rent by Lessee to Lessor with Lessee's next rental installment.

## SECTION NINE. ALTERATIONS AND ADDITIONS

A. Lessee shall not, without Lessor's prior, express, and written consent, make any alterations, additions, or improvements to the demised premises. As a condition to giving such consent, Lessor may require that Lessee remove any such alterations, additions, or improvements at the expiration of the term and restore the premises to their prior condition. Lessor understands and agrees that Lessee may need to install electrical connections or cabling for electronic equipment, telephones, internet access, computers, antennas, cameras, radios, video surveillance and related equipment that may be necessary for its intended use of the premises and Lessor hereby consents to the Lessee's installation of such equipment.

B. Lessee shall not permit any mechanics' or material suppliers' liens to be filed against the premises and shall hold Lessor harmless from any damage, loss, or expense arising out of any such work in, on, or about the premises.

C. All alterations, improvements, and additions on and to the demised premises by Lessee shall be done in compliance with all applicable governmental codes and regulations.

D. At the option of Lessor, all alterations, improvements, or additions that may be made on or to the demised premises shall become the property of Lessor and remain upon and be surrendered with the demised premises at the expiration of the term of this **lease agreement**,

provided, however, that Lessor may not be entitled to such alterations, improvements, or additions unless Lessor had advised Lessee that Lessor was exercising that option prior to Lessee's committing to the making of the alteration, improvement, or addition.

E. Lessee's machinery, equipment, and trade fixtures, other than that which is affixed to the demised premises so that it cannot be removed without material damage to the demised premises, shall remain the property of Lessee and may be removed by Lessee.

## SECTION TEN: INSURANCE

A. Lessor shall maintain in force during the term of this **lease agreement** a policy of insurance issued by a company authorized to engage in the insurance business in Alabama, insuring the building for an amount not less than its fair market value against damage or destruction by fire and by perils covered by the **standard form** of extended coverage endorsements to fire insurance policies in Alabama in effect at the time that the policies are obtained.

B. Lessor acknowledges that Lessee self- insures against liability for negligence.

C. The parties agree that each party shall be responsible for the risk of loss of its own personal property located on the premises where damage is the result of Acts of God, intentional or willful acts of third parties, or from negligence. Nothing herein shall be construed to prevent either the Lessee or Lessor from recovering damages for losses caused by third parties.

## SECTION ELEVEN. DAMAGE OR DESTRUCTION

A. If the premises are damaged to such an extent as to render them untenable in whole or in substantial part, or are destroyed, it shall be optional with Lessor to repair or rebuild them.

B. On the happening of any such damage or destruction, Lessee shall give Lessor or Lessor's agent immediate written notice.

C. Lessor shall have not more than SIXTY (60) days after the date of such notification to notify Lessee in writing of Lessor's intention to repair or to rebuild the premises, or the part so damaged. If Lessor elects to repair or rebuild the premises, Lessor shall prosecute the work of repairing or rebuilding without unnecessary delay. During such period, the rent of the premises shall be abated in the same ratio that the part of the premises rendered for the time being unfit for occupancy shall bear to the whole of the demised premises.

D. If Lessor shall fail to give the notice specified above, Lessee shall have the right to declare this **lease agreement** terminated by written notice to Lessor.

E. If the building in which the demised premises are located shall be damaged (even though the demised premises shall not be damaged) to such extent that in the opinion of Lessor it shall not be practicable to repair or rebuild, or is destroyed, then it shall be optional with Lessor to terminate this **lease agreement** by written notice served on Lessee within SIXTY (60) days after the damage or destruction.

F. In the event that the rent is abated as set forth in subsection C. of this Section Eleven or in the event of any termination pursuant to subsection D. above, then Lessor shall promptly refund to the Lessee any prepaid rent.

## SECTION TWELVE. ADVERTISING AND WINDOWS

Lessee shall not inscribe any inscription or post, place, or in any manner display any sign, notice, picture, placard, or poster, or any advertising matter anywhere in or about the demised premises or the building at places visible (either directly or indirectly as an outline or shadow on a glass pane) from anywhere outside the demised premises without first obtaining Lessor's written consent. Any such consent by Lessor shall be on the understanding and condition that Lessee will remove the item at the expiration or sooner termination of this **lease agreement** and that Lessee shall repair any damage to the demised premises or to the building caused by removal.

## SECTION THIRTEEN. LIENS AND INSOLVENCY

A. Lessee shall keep the demised premises and the building free from any liens arising out of any work performed, materials ordered, or obligations incurred by Lessee.

B. Lessee shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature on, or in any manner bind, the interest of Lessor in the premises or to charge the rentals payable under this **lease agreement** for any claim in favor of any person dealing with Lessee, including those who may furnish materials or perform labor for any construction or repairs. Each such claim shall affect and each such lien shall attach to, if at all, only the leasehold interest granted to Lessee under this **lease agreement**.

## SECTION FOURTEEN. DEFAULTS

A. Time is of the essence of this **lease agreement**.

B. If Lessee shall violate or fail to keep or perform any covenant, **agreement**, term, or condition of this **lease agreement** at the time designated, or if Lessee is in default or violation of a term of this **lease agreement** for which no specific time is designated and the default or violation shall continue or shall not be remedied within THIRTY (30) days after notice in writing is given by Lessor to Lessee specifying the matter claimed to be in default, or if Lessee receives such notice and cures a default and then commits the same default within the next three months, then Lessor, at its option, may immediately declare Lessee's rights under this **lease agreement** terminated. Lessor may then reenter the demised premises, using such force as may be necessary, repossess the demised premises, and remove all persons and property from the demised premises.

C. With respect to any default that cannot be cured within thirty (30) days, however, Lessor shall not terminate this **lease agreement** if Lessee within the thirty day period takes all necessary steps to cure the default and then continuously exercises due diligence to cure the default.

D. If Lessor shall fail to provide the premises for occupancy or fail to keep or perform any covenant, agreement, term, or condition of this lease agreement at the time designated, or if Lessor is in default or violation of a term of this lease agreement for which no specific time is designated and the default or violation shall continue or shall not be remedied within THIRTY (30) days after notice in writing is given by Lessee to Lessor specifying the matter claimed to be in default, or if Lessor receives such notice and cures a default and then commits the same default within the next three months, then Lessee, at its option, may immediately declare Lessor's rights under this lease agreement terminated. Lessee may then vacate the demised

premises and its obligations to pay rental pursuant to this lease shall cease. Any months rental payments that the Lessee has paid in advance will be refunded to the Lessee immediately by the Lessor.

E. With respect to any default that cannot be cured within thirty (30) days, however, Lessee shall not terminate this lease agreement if Lessor within the thirty (30) day period takes all necessary steps to cure the default and then continuously exercises due diligence to cure the default.

#### SECTION FIFTEEN. PRIORITY

A. Lessee agrees that this **lease agreement** shall be subordinate to any mortgages or deeds of trust now or at any time in the future constituting a lien upon the demised premises or the building containing the demised premises, and to any and all advances to be made under such mortgages or deeds of trust, and to the interest on such advances, and all renewals, replacements, and extensions of such mortgages or deeds of trust, provided, however, that the mortgagees or the beneficiaries named in the deeds of trust shall agree to recognize this **lease agreement** in the event of foreclosure if Lessee is not in default under this **lease agreement** and if Lessee attorns to the mortgagees or beneficiaries.

B. Within thirty (30) days after written request from Lessor, Lessee shall execute any documents that may be reasonably necessary or desirable to effectuate the subordination of this **lease agreement** to any such mortgages or deeds of trust and shall execute estoppel certificates as requested by Lessor in the **standard form** of any such mortgagee or beneficiary.

#### SECTION SIXTEEN. NO WAIVER

A. Waiver by either party of any breach of any term, covenant, or condition in this **lease agreement** shall not be deemed to be a waiver of such term, covenant, or condition, or of any subsequent breach of the same or any other term, covenant, or condition contained in this **lease agreement**.

B. The subsequent acceptance of rent under this **lease agreement** by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this **lease agreement**, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of the preceding breach at the time of accepting rent.

#### SECTION SEVENTEEN. SURRENDER OF POSSESSION

Upon expiration of the term of this **lease agreement**, whether by lapse of time or otherwise, Lessee shall promptly and peacefully surrender the demised premises to Lessor.

#### SECTION EIGHTEEN. HOLDING OVER

If Lessee shall, with the written consent of Lessor, hold over after the expiration of the term of this **lease agreement**, the tenancy shall be for an indefinite period of time on a month-to-month tenancy, which tenancy may be terminated as provided by the laws of Alabama. During such tenancy, Lessee agrees to pay Lessor the same rate of rental as set forth in this **lease agreement**, unless a different rate shall be agreed upon, and to be bound by all of the terms, covenants, and conditions specified in this **lease agreement**, so far as applicable.



## SECTION NINETEEN. CONDEMNATION

A. If all of the demised premises or any portion of the building as may be required for the reasonable use of the demised premises shall be taken by eminent domain (or by a voluntary conveyance made in lieu of a taking by eminent domain), this **lease agreement** shall terminate automatically as of the date Lessee is required to vacate or will be deprived of the reasonable use of the demised premises, and all rentals shall be paid to that date.

B. In the event of a taking of a part of the demised premises, Lessee may, at its election, terminate this **lease agreement** by notice in writing to Lessor within thirty (30) days after the receipt by Lessee of written notice of the proposed taking. Any such notice by Lessee to Lessor shall be effective on a date that shall be specified by Lessee in the notice, but shall be no later than sixty (60) days after the date of the giving of notice. In such circumstances Lessor shall refund the pro rata portion of any annual rental payments made by the Lessee at the rate of One thousand two hundred and fifty dollars (\$1,250.00) per month for each month of the year that the lease term is reduced for that year.

## SECTION TWENTY. NOTICES

A. All notices, demands, or other writings required by this **lease agreement**, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified or registered and postage prepaid, and addressed as follows:

If to Lessor: Mr. Derrick Young  
U.G. White Hardware, LLC  
225 East Clinton Avenue  
Huntsville, Alabama 35801

If to Lessee: Mayor, City of Huntsville  
308 Fountain Circle  
Huntsville, Alabama 35801

and

City Attorney, City of Huntsville  
308 Fountain Circle  
Huntsville, Alabama 35801

The address to which any notice, demand, or other writing may be sent to any party as above provided may be changed by written notice given by such party as provided above.

## SECTION TWENTY-ONE. SECTION HEADINGS

The titles to the sections of this **lease agreement** are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this **lease agreement**.

## SECTION TWENTY-TWO. LESSOR'S CONSENT

Whenever Lessor's consent is required under the terms of this **lease agreement**, such consent shall not be withheld unreasonably.

## SECTION TWENTY-THREE. ASSIGNMENT AND SUBLETTING

A. Lessee shall not assign this **lease agreement** nor sublet the whole or any part of the demised premises without first obtaining Lessor's written consent, except in the event of an assignment or subletting to a board, commission, agency or affiliated public entity of Lessee.

B. No assignment or subletting shall relieve Lessee of its liability under this **lease agreement**.

C. Consent to any assignment or subletting by Lessor shall not operate as a waiver of the necessity for a consent to any subsequent assignment or subletting, and the terms of such consent shall be binding upon any person holding by, under, or through Lessee.

## SECTION TWENTY-FOUR. BINDING EFFECT

This **lease agreement** shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties. The parties agree that this lease shall remain in effect through any changes in ownership of the Mason Building.

## SECTION TWENTY-FIVE. LESSOR'S ACCESS

A. Lessor and its agents shall have the right, upon advance notice to enter the premises at reasonable times agreeable to the Lessee for the purpose of inspecting them and making such repairs as Lessor may deem necessary or desirable.

## SECTION TWENTY-SIX. TAXES

A. Lessor shall pay all real property taxes assessed against the premises.

## SECTION TWENTY-SEVEN. ACCEPTANCE OF PREMISES

A. Lessee accepts the demised premises "as is" and in their present condition and subject to all applicable zoning, municipal, county, and state laws, ordinances, and regulations governing and regulating the use of the premises, and accepts this **lease agreement** subject to such laws, ordinances, and regulations.

B. Lessee acknowledges that neither Lessor nor Lessor's agents have made any representation or warranty as to the suitability of the premises for the conduct of Lessee's business.

## SECTION TWENTY-EIGHT. ATTORNEY'S FEES

In the event either party must commence a legal action to enforce its rights hereunder, such party shall be entitled to recover all attorney's fees and expenses incurred by the party as a result of such action, provided such party receives a judgment in its favor from a court of competent jurisdiction.

## SECTION TWENTY-NINE. ENTIRE AGREEMENT

This **lease agreement** shall constitute the entire **agreement** between the parties. Any prior understanding or representation of any kind preceding the date of this **lease agreement** shall not be binding upon either party except to the extent incorporated in this **lease agreement**.

## SECTION THIRTY. MODIFICATION OF AGREEMENT

Any modification of this **lease agreement** or additional obligation assumed by either party in connection with this **agreement** shall be binding only if approved and evidenced in a writing signed by each party or an authorized representative of each party.

## SECTION THIRTY-ONE. GOVERNING LAW

This **lease agreement** shall be governed by, construed, and enforced in accordance with the laws of the State of Alabama. Venue for any actions to enforce the terms of this Lease Agreement shall be in Madison County, Alabama or the U.S. District Court of the Northern District of Alabama, Northeastern Division.

**Lessor:**

**Lessee:**

**U. G. White Hardware, LLC**

**City of Huntsville, Alabama**

By: 

By: \_\_\_\_\_

Its: Managing Member

Tommy Battle

Its: Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF ALABAMA )

COUNTY OF MADISON )

I, the undersigned Notary Public in and for said County in said State, hereby certify that Derrick Young as Managing Member of U.G. White Hardware, LLC, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same for U.G. White Hardware, LLC, on the day the same bears date.

GIVEN under my hand and official seal this the 28<sup>th</sup> day of October, 2015.

  
Notary Public  
My Commission Expires: 8-19-2019

[NOTARIAL SEAL]

STATE OF ALABAMA     )  
                                      )  
COUNTY OF MADISON    )

I, the undersigned Notary Public in and for said County in said State, hereby certify that Tommy Battle, as Mayor and Charles E. Hagood, City Clerk-Treasurer, respectively, of the City of Huntsville, a municipal corporation, are signed to the foregoing document, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same for and as the act of said City of Huntsville on the day the same bears date.

GIVEN under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

ROUTING SLIP  
CONTRACTS AND AGREEMENTS

**Council Meeting Date: 11/5/2015**

Phone # **256-427-5000**

Contract or Agreement: **Lease Agreement for 115 East Clinton Avenue**

Document Name: Lease Agreement for 115 Clinton Avenue U.G. White Hardware

**\$75,000 +**

Procurement Agreements	
<u>Not Applicable</u>	<u>Not Applicable</u>

**Not Applicable**

<p><b>Grant-Funded Agreements</b></p>	
<p><b>Not Applicable</b></p>	<p><b>Grant Name:</b></p>

**Grant Name:**

Department	Signature	Date
1) Originating	Mary C. Cates	Oct 28, 2015
2) Legal	Mary C. Cates	Oct 28, 2015
3) Finance	[Signature]	11/2/15
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		